REMARKS

By this Amendment, claims 1 and 11 are amended. Support for the claim amendments comes from the specification, as originally filed, at paragraphs 50-51, for example. Accordingly, no new matter is added. Currently, claims 1-20 are pending in this application, all but claims 1-7 and 11-14 having been withdrawn by the Office as directed to an unelected invention.

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing the pending claims in condition for allowance. Applicants submit that the proposed amendments of claims 1 and 11 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, because all of the elements and their claimed relationships were either claimed earlier or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner. More specifically, the amendments to the independent claims are made solely to include specific description of subject matter that has already been considered by the Examiner. In addition, the proposed amendments would not result in additional claims being added to the application. Furthermore, the proposed amendments would place the claims in better form for appeal, should an appeal be necessary. Applicants respectfully submit that the proposed amendments were not made earlier in prosecution of the application because the need for the amendments was not evident until issuance of the Final Office Action.

I. Obviousness-Type Double Patenting

The Office maintains its rejection of claim 2 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of co-pending patent App. No. 10/833,097. To address this rejection, a terminal disclaimer is filed herewith. Such terminal disclaimer is limited in scope to claim 2 of App. No. 10/729,980 and claim 3 of App. No. 10/833,097. In view of the attached Terminal Disclaimer, Applicants request that the rejection be withdrawn.

II. Rejection Under 35 U.S.C. 112, second paragraph

The Office maintains the rejection of claims 1-7 and 11 under 35 U.S.C. 112, second paragraph. Specifically, the Office states (on page 3 of the Office Action dated Jan. 23, 2007) that the previously presented claim 1 does not indicate that the luminescence-emission substrate is specific for the avidin or streptavidin complex enzyme. In order to make this relationship clear, claim 1 is currently amended in step (e) to recite "adding avidin enzyme complex or streptavidin enzyme complex into the tubes, wherein the enzyme reacts with a luminescence-emission substrate". Furthermore, step (h) of claim 1 is currently amended to point out that the method comprises detecting a light-emission change utilizing the same luminescence-emission substrate recited in step (e)—which is therefore specific for the avidin or streptavidin enzyme complex—rather than "a" luminescence-emission substrate. Support for these amendments to claim 1 is present in the original specification at [0050]-[0051], wherein detection is described in one embodiment.

Steps (h) and (i) now recite "light-emission" rather than "color" change. This amendment follows from the fact that the "emission" from the recited "luminescence-emission substrate" will in fact be light emission. As is well-known, luminescence is a form of cold body radiation, or light.

It is respectfully emphasized that, according to the present invention, detection of microorganism cDNA is not based purely on the DNA labeling agent; detection is based on the reaction of enzyme with a luminescence-emission substrate. Amended claim 1 now clearly teaches the criticality with respect to how detection is achieved.

The system of claim 11 is similarly amended in elements (c) and (d) to recite "a luminescence-emission substrate" and "avidin enzyme complex or streptavidin enzyme complex, wherein the enzyme is capable of reacting with the luminescence-emission substrate." This amendment does not add new matter, for reasons presented above, and distinctly points out that the luminescence-emission provided in (c) is specific for the avidin or streptavidin enzyme complex, instead of being a generic luminescence-emission substrate for the system of claim 11.

In view of the amendments to claims 1 and 11, it is submitted that all pending claims now particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The proposed amendments herein are fully supported

and taught in the original specification and are therefore not new matter. Furthermore, one of ordinary skill in the art, reading Applicants' original specification, would be expected to understand the subject matter of claims 1-7 and 11-14 in such a way as to be able to make and use the invention embodied by these claims. Therefore, all pending claims in this application now comply with 35 U.S.C. §112.

The objections to claims 12-14 should be overcome as claim 11 is now submitted to be allowable, for the reasons set forth above.

III. Conclusion

In view of the foregoing remarks, Applicants submit that this application is in condition for allowance. Applicants therefore request entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims. If the Office believes anything further is necessary to place this application in even better condition for allowance, Applicants request that their undersigned representative be contacted at the telephone number or e-mail address listed below to discuss the remaining issues.

Respectfully submitted,

Date: July 23, 2007 By: 

Bruce H. Troxell
Reg. No. 26,592

TROXELL LAW OFFICE PLLC
5205 Leesburg Pike, Suite 1404
Falls Church, Virginia 22041
Telephone: 703 575-2711
Telefax: 703 575-2707

CUSTOMER NUMBER: 40144